

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Petition by the Colorado Public Utilities)	CC Docket No. 96-45
Commission, Pursuant to 47 C.F.R.)	
§ 54.207(c), for Commission Agreement)	
in Redefining the Service Area of)	
Wiggins Telephone Association,)	
A Rural Telephone Company)	

**SUPPLEMENT TO PETITION BY THE COLORADO PUBLIC UTILITIES
COMMISSION**

The Colorado Public Utilities Commission (COPUC) hereby submits this Supplement to its Petition for Commission agreement to redefine the service area of Wiggins Telephone Association, a rural telephone company (WTA). COPUC submitted its Petition to the Commission on May 30, 2003. A number of comments have already been filed regarding this Petition. On April 12, 2004, the Commission released its Public Notice soliciting supplemental and additional comments on a number of pending petitions, including the instant Petition. *See Public Notice*, CC Docket No. 96-45, DA 04-999 (rel. April 12, 2004), 69 Fed. Reg. 22029-02 (published April 23, 2004) (Public Notice). COPUC now affirms its request for Commission agreement to redefine WTA's service area, pursuant to the provisions of 47 C.F.R. § 54.207(c).

Supplement to Petition

COPUC's Petition seeks Commission agreement to redefine WTA's service area to the wire center level pursuant to the provisions of 47 C.F.R. § 54.207(c). As explained in the Petition, WTA's current service area (*i.e.* its study area) comprises four exchanges that include five wire centers: Wiggins, Grover, New Raymer, Briggsdale, and Hoyt. Some of those wire centers are non-contiguous, and encompass a large area of the state. The Public Notice solicits supplemental comment regarding COPUC's Petition in light of the Commission's *Highland Cellular Order*¹ and *Virginia Cellular Order*.² In those orders the Commission articulated a new public interest analysis and new standards for designating competitive Eligible Telecommunications Carriers (ETC) for rural areas.

¹ *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004).

Those new standards are intended to apply to related proceedings, such as petitions for redefinition of rural service areas under Rule 54.207(c).

The *Highland Cellular Order* and *Virginia Cellular Order* (Orders) both concerned primarily petitions for designation as competitive ETCs in certain service areas, including rural service areas. COPUC emphasizes that its Petition does not concern ETC designation, but, rather, is a request for Commission concurrence in redefining a rural service area to the wire center level. In Colorado, COPUC has claimed jurisdiction to consider providers' requests for designation as ETCs. As such, COPUC, in specific ETC designation proceedings, undertakes the analysis required in 47 U.S.C. § 214(e)(1) and (2).

Insofar as redefinition proceedings are concerned (*e.g.* the present Petition), the Orders articulate important points: First, the Commission reemphasizes³ its concern that cream-skimming in rural areas by competitive ETCs be minimized. The Commission explained that rural cream-skimming occurs when competitors serve only the low-cost, high-revenue customers in a rural company's study area, thereby undercutting the incumbent LEC's ability to provide service throughout the area. *See Highland Cellular Order*, paragraphs 26 and 39; *Virginia Cellular Order* paragraph 32. After analyzing information regarding population density in certain wire centers, the Commission refused

² *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22 2004).

³ When seeking to redefine a rural service area, a state commission and the Commission itself must consider the Joint Board's recommendations regarding areas served by rural companies. Notably, the Joint Board's first recommendation in its 1996 decision (*see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd. 87 (1996)) was that the potential for cream-skimming by competitive ETCs be minimized.

to designate competitive ETCs to serve in those wire centers only, because such action would have allowed a competitor to cream-skim (*i.e.* to serve only the lowest-cost, highest-density wire centers). *See, Highland Cellular Order*, paragraphs 29-31; *Virginia Cellular Order*, paragraphs 35-36. On the other hand, the Commission agreed to redefine some rural study areas to the wire center level after examining population density in those wire centers and concluding that the incumbent's ability to serve its entire study area would not be undermined, and after finding that the cellular competitor intended to provide service throughout its licensed territory. *Highland Cellular Order*, paragraphs 39; *Virginia Cellular Order*, paragraphs 40 and 42.

Second, the Commission noted that concerns relating to cream-skimming are diminished if the incumbent LEC has disaggregated its high cost support. Specifically, the Commission stated that, "There are fewer issues regarding inequitable universal service support and concerns regarding the incumbent's ability to serve its entire study area when there is in place a disaggregation plan for which the per-line support available to a competitive ETC in the wire centers located in 'low-cost' zones is less than the amount a competitive ETC could receive if it served in one of the wire centers located in the 'high-cost' zones." *See Highland Cellular Order*, footnote 96. The Commission did hold that disaggregation of support will not "in every instance" protect against cream-skimming. *See Highland Cellular Order*, paragraph 32.

Third, in the Orders the Commission expressed concern with designating competitive ETCs to serve below the wire center level. *See, for example, Highland*

Hence, the potential for cream-skimming in rural service areas has been a required consideration in redefinition proceedings even prior to issuance of the Orders.

Cellular Order, paragraph 33 (competitor must commit to provide supported services to customers throughout a "minimum geographic area"). The Orders held that a rural telephone company's wire center is an appropriate minimum service area for a competitive ETC. *See Highland Cellular Order*, paragraphs 33 and 37); *Virginia Cellular Order*, paragraph 40.

COPUC's Petition (for Commission concurrence in redefining WTA's study area) is consistent with the points made in the Orders. As explained in the Petition, COPUC is seeking to redefine WTA's study area to the wire center level. The Orders held that this is an appropriate service area for a competitive ETC in a rural area.

COPUC also reemphasizes that in this case WTA has agreed to disaggregate its universal service support under Path 2 (47 C.F.R. § 54.315(c)). Instead of receiving uniform universal service per access line for its entire study area, WTA now receives support according to the Path 2 plan approved by COPUC.⁴ Generally, that plan disaggregated WTA's support according to the five wire centers, with support allocated into four zones per wire center.⁵ To illustrate, based on 2002 data WTA would receive LSS universal support of \$8.41 for the Briggsdale wire center, \$12.63 for New Raymer, \$10.01 for Grover, \$3.15 for Hoyt, and \$6.18 for Wiggins. Obviously, WTA's method of disaggregating its universal service support has effectively restricted, if not entirely eliminated, a competitive ETC's opportunity to cream-skim. There is now a substantial difference in the support available to potential competitors. Potential ETCs seeking to

⁴ Attachment 4 to the Petition is COPUC's Decision No. C03-0243, the decision approving the Path 2 Stipulation between WTA and interested parties to the proceeding.

⁵ Attachment 2 to the Petition, Stipulation and Settlement Agreement approved by COPUC in Docket No. 02A-276T, provides the detailed explanation of the disaggregation method for WTA.

serve only low-cost, high-density wire centers will receive substantially less universal support.

Since the filing of COPUC's Petition in May, 2003, no additional ETC proceedings involving WTA's service area have occurred. At this time, if the Commission agreed to redefine WTA's service area to the wire center level, only one company (N.E. Colorado Cellular) would qualify for competitive ETC status in only one WTA wire center. Specifically, NECC would qualify for ETC status in the Wiggins wire center and no other WTA wire center. COPUC reiterates that cream skimming for this particular company is not an issue. WTA has targeted support to various zones within each of its five wire centers. Even with this targeting, COPUC proposes redefinition to the wire center level only.

Finally, COPUC supplements its Petition by providing the most current access line information for the WTA wire centers: 806 in Wiggins; 238 in Hoyt; 247 in Briggsdale; 164 in New Raymer; and 248 in Grover.

CONCLUSION

For the reasons stated here and in the Petition, COPUC requests that the Commission concur with COPUC in redefining the service area for Wiggins Telephone Association.

Dated, this 14th day of May, 2004.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within SUPPLEMENT TO
PETITION BY THE COLORADO PUBLIC UTILITIES COMMISSION this 14th day
of May, 2004 by U.S. Mail to the persons listed below.

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